

TITLE 18. BOARD OF EQUALIZATION

The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 1685.5, *Calculation of Estimated Use Tax - Use Tax Table*

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation) 1685.5, *Calculation of Estimated Use Tax - Use Tax Table*. The proposed amendments to Regulation 1685.5 update the regulation's definition of the average state, local, and district sales and use tax rate to include the rates of all the sales and use taxes imposed under article XIII of the California Constitution, which are currently the taxes imposed by sections 35 and 36 of article XIII of the California Constitution. The proposed amendments also eliminate any future requirements to amend the regulation's definition of the average state, local, and district sales and use tax rate each time a sales and use tax is added to or deleted from article XIII of the California Constitution.

PUBLIC HEARING

The Board will conduct a meeting in Room 121 at 450 N Street, Sacramento, California on March 25-26, 2015. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on March 25 or 26, 2015. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulation 1685.5.

AUTHORITY

RTC section 7051

REFERENCE

RTC section 6452.1

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

Under RTC sections 6202 and 6453, consumers are primarily liable for reporting and paying use tax imposed on the storage, use, or other consumption of tangible personal

property in this state. However, under RTC sections 6203, 6226, and 6453, specified retailers are required to register with the Board, collect use tax from their California customers, and report and pay the use tax to the state. Therefore, under Regulation 1685, *Payment of Tax by Purchasers*, consumers are required to report and pay their own use taxes to the state when they purchase tangible personal property for storage, use, or other consumption in this state from unregistered retailers that do not collect California use tax.

Prior to 2010, consumers could only report and pay their use taxes to the Board. However, RTC section 6452.1 was enacted in 2010 to make it more convenient for consumers to comply with their use tax obligations by permitting consumers to make an irrevocable election to report “qualified use tax” on an “acceptable [income] tax return” filed with the Franchise Tax Board (FTB). RTC section 6452.1, subdivision (d)(2), as enacted by Statutes 2010, chapter 721, defined the term “qualified use tax” to mean a taxpayer’s actual unpaid use tax liability after applying the state use taxes imposed under the Sales and Use Tax Law (RTC § 6001 et seq.) and section 35 of article XIII of the California Constitution, and the local and district use taxes imposed in conformity with the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC § 7200 et seq.) or in accordance with the Transactions and Use Tax Law (RTC § 7251 et seq.) to the taxpayer’s purchases of tangible personal property subject to use tax.

Senate Bill No. (SB) 86 (Stats. 2011, ch. 14) amended RTC section 6452.1 to make it more convenient for taxpayers to comply with their use tax obligations by giving taxpayers the option to report their “estimated use tax liabilities,” based upon their AGIs for income tax purposes, for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1000), as determined from a use tax table, on their income tax returns, instead of calculating and reporting their actual unpaid use tax liabilities (as described above). In addition, RTC section 6452.1, subdivision (d)(2)(A)(i)(II), as amended by SB 86, requires the Board to “annually calculate the estimated amount of use tax due according to a person’s adjusted gross income and by July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table” for inclusion in the instructions to the FTB’s returns and use by eligible taxpayers. Furthermore, SB 86 expanded the definition of “qualified use tax” by deleting the reference to “section 35” of article XIII of the California Constitution from RTC section 6452.1, subdivision (d)(2).

The Board adopted Regulation 1685.5 on July 26, 2011, to prescribe the specific use tax table that taxpayers could use to estimate their calendar-year 2011 use taxes based upon their adjusted gross incomes (AGIs), prescribe the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person’s AGI for calendar-year 2012 and subsequent years, and prescribe the format of the use tax tables the Board would be required to make available to the FTB for calendar-year 2012 and subsequent years.

As relevant here, Regulation 1685.5, subdivision (b)(7), defines the “average state, local, and district sales and use tax rate” for purposes of determining the rate of sales and use tax to be used to calculate the estimated amount of use tax due according to a person’s

AGI. And, subdivision (b)(7)(A) of Regulation 1685.5 specifically includes the rate of the taxes imposed by “section 35 of article XIII of the California Constitution” in the average state, local, and district sales and use tax rate because the only statewide sales and use taxes imposed under the California Constitution at the time Regulation 1685.5 was adopted were the taxes imposed by section 35 of article XIII.

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 1685.5

California voters approved Proposition 30 in the General Election of 2012, and Proposition 30 added section 36 to article XIII of the California Constitution to impose temporary sales and use taxes, and temporarily increase the statewide sales and use tax rate by one quarter of one percent on and after January 1, 2013, and before January 1, 2017. Therefore, Board staff determined that there was an issue because the definition of the average state, local, and district sales and use tax rate in Regulation 1685.5, subdivision (b)(7), does not include the rate of the temporary taxes, which must be included in the Board’s calculations of the estimated amount of use tax due according to a person’s AGI for 2013 through 2016. And, Board staff concluded that the definition of the average state, local, and district tax rate in Regulation 1685.5, subdivision (b)(7), needs to be amended to include the rate of the temporary taxes in order to address the issue.

As a result, Board staff prepared Formal Issue Paper 14-008, which recommended that the Board make Regulation 1685.5’s definition of the average state, local, and district sales and use tax rate consistent with the temporary taxes imposed under the California Constitution and the current statutory definition of “qualified use tax” by deleting the specific reference to “section 35 of” from subdivision (b)(7)(A)’s current reference to the “sales and use taxes imposed under section 35 of article XIII of the California Constitution.” This was because staff determined that deleting the reference to “section 35 of” expands the provisions of subdivision (b)(7)(A) so that they incorporate the rates of all of the sales and use taxes imposed under article XIII of the California Constitution, which are currently the sales and use taxes imposed by section 35 and the temporary taxes imposed by section 36 of article XIII of the California Constitution. This was also because staff determined that expanding the provisions of subdivision (b)(7)(A) eliminates any future requirements to amend the regulation’s definition of the average state, local, and district sales and use tax rate each time a sales and use tax is added to or deleted from article XIII of the California Constitution. The formal issue paper did not recommend that the Board alter the regulation’s definition of the average state, local, and district sales and use tax rate in any other way, and did not recommend that the Board make any other changes to the manner in which the Board is required to calculate the estimated amount of use tax due according to a person’s AGI.

Board staff submitted Formal Issue Paper 14-008 to the Board for consideration during its November 19, 2014, Business Taxes Committee (BTC) meeting. And, during the Board’s November 19, 2014, BTC meeting, the Board Members unanimously voted to propose the staff’s recommend amendments to Regulation 1685.5 because the Board determined that the amendments are reasonably necessary to have the effect and

accomplish the objective of addressing the issue referred to above by including the rate of the temporary taxes in the regulation's definition of the average state, local, and district tax rate.

The Board anticipates that the proposed amendments to Regulation 1685.5 will improve transparency by clarifying that the Board's calculations of the estimated amount of use tax due according to a person's AGI include the rates of all the sales and use taxes imposed under article XIII of the California Constitution. The Board also anticipates that the proposed amendments will benefit the Board by eliminating any future requirements to amend the regulation each time a sales and use tax is added to or deleted from article XIII of the California Constitution.

The Board has performed an evaluation of whether the proposed amendments to Regulation 1685.5 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations. This is because there are no other sales and use tax regulations that prescribed the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's AGI under RTC section 6452.1. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1685.5 or the proposed amendments to Regulation 1685.5.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 1685.5 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT

The Board has determined that the adoption of the proposed amendments to Regulation 1685.5 will result in no direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the proposed amendments to Regulation 1685.5 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulation 1685.5 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the proposed amendments to Regulation 1685.5 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulation 1685.5 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 1685.5 will not affect the benefits of Regulation 1685.5 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Regulation 1685.5 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative

action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on March 25, 2015, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 1685.5 during the March 25-26, 2015, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulation 1685.5. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an underscored and strikeout version of the text of Regulation 1685.5 illustrating the express terms of the proposed amendments. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulation 1685.5, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulation 1685.5 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulation 1685.5, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.